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ABSTRACT

This booklet is intended to help Maine women recognize and enforce their rights under Maine and federal law. It is not designed to be a substitute for lawyers' services, but to inform women of their legal rights so that they will know when to consult a lawyer or a governmental agency for assistance in enforcing these rights. Organized topically by chapter, the booklet contains concise answers to often asked legal questions. For example, Chapter 1 discusses 17 questions which deal with employment discrimination. Included among these are: What Maine law forbids employment discrimination based on sex?; Does federal law prohibit employment discrimination based on sex?, and How do I file a complaint under Title VII? Succeeding chapters treat the following areas: credit discrimination; discrimination in educational opportunities; housing discrimination; insurance; constitutional rights; wage and hour laws; public financial assistance; social security; criminal law; marriage and your rights as a married person; annulment, legal separation, and divorce; parents and children; name change; wills and probate; health; and hiring a lawyer. (Author/RM)

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THE LEGAL RIGHTS OF MAINE WOMEN

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TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC) AND
USERS OF THE ERIC SYSTEM."

By

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Maine State American Revolution Bicentennial Commission

FORWARD

This booklet is written to help Maine women recognize and enforce their rights under Maine and federal law. It is not designed to be a substitute for lawyers' services, but to inform women of their legal rights so that they will know when to consult a lawyer or a governmental agency for assistance in enforcing these rights.

Because of the limitation of space, no area of the law has been described in great detail and many important laws have not been discussed. Only the laws most frequently encountered by or most important to women have been covered. Further, laws change. Some laws cited in this booklet may have been amended since its publication. Therefore, a person using this booklet may desire to check with the appropriate governmental agency, a county bar association law library, or with a lawyer to learn whether or not a law has been amended.

I suggest that the most efficient way to use this booklet is to look in the Table of Contents under the most pertinent subject and find the question under that subject heading that most closely relates to the legal problem about which information is sought. Then turn to the page number referenced and find the answer to the question and other pertinent legal information.

It is my hope that this booklet will give Maine women the tools they need to deal effectively with their legal problems.

Professor Judy R. Potter
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Women

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CHAPTER I

EMPLOYMENT DISCRIMINATION

1. WHAT ARE EXAMPLES OF EMPLOYMENT DIS- CRIMINATION?

The following acts are typical examples of employment discrimination:

1. An employer doesn't hire women because of the preferences of co-workers, clients, or customers.
2. An employer doesn't hire women for jobs which traditionally have been held by men.
3. An employer doesn't hire women for jobs which require supervision over men or working with men.
4. An employer doesn't hire women for jobs which involve late night hours, travel, or heavy physical labor.
5. An employer doesn't hire women with children or makes inquiries into women's use of birth control methods or child care arrangements.
6. An employer refuses to promote or assign women to particular positions for any of the above reasons.
7. An employer pays women less than he pays men for doing the same job.
8. An employer hires only women for some jobs and only men for others.
9. An employer forces women to retire at a different age than men.
10. An employer fires, lays-off or forces women to take an unreasonable amount of time off without pay because of pregnancy when they are physically capable of working.

2. IS IT ILLEGAL FOR AN EMPLOYER TO REFUSE TO PROVIDE GROUP INSURANCE COVERAGE FOR PREGNANCY AND CHILDBIRTH?

The United States Supreme Court has held that an employer or a governmental body which provides disability or health insurance

to its employees does not have to provide maternity coverage even though the employer provides coverage for medical problems which are unique to men. Legislation has been introduced in the Maine Legislature and in the Congress of the United States to explicitly make this type of discrimination illegal. The legislation has not been enacted as yet. This type of discrimination is still prohibited by federal regulations governing schools. The validity of these particular regulations has not been litigated.

3. WHAT REMEDIES ARE AVAILABLE IN AN EMPLOYMENT DISCRIMINATION CASE?

There are a number of possible remedies available in an employment discrimination case. They include the awarding of back pay, compelling the employer to take acts to correct the discrimination, and the imposing of an affirmative action plan upon the employer which changes the employer's employment practices. In addition, a plaintiff may be awarded her attorney's fees.

4. WHAT MAINE LAW FORBIDS EMPLOYMENT DISCRIMINATION BASED ON SEX?

The Maine Human Rights Act forbids illegal discrimination in employment based on sex. Discrimination is forbidden in recruiting, hiring, promotion, transfer, assignment, pay and other compensation, or in the terms, conditions, or privileges of employment. It is also illegal to discriminate on account of race, color, physical or mental handicaps, religious creed, age, ancestry, or national origin. Discrimination is permitted if it is necessary for the particular job involved. For example, an employer is permitted to hire female fashion models to model female garments. This exception has been very narrowly construed and cannot be used to justify discrimination in general.

The Maine Human Rights Commission (MHRC) is the state agency which enforces this law. It is located in Augusta, Maine. The MHRC has a standard procedure for dealing with complaints of discrimination.

5. HOW DO I FILE A COMPLAINT WITH THE MAINE HUMAN RIGHTS COMMISSION?

If you wish to complain of being discriminated against, you may file a complaint with the MHRC. You should ask the MHRC to send you a form which you may use to file the complaint. It is usually best to obtain the assistance of an attorney or a person from the MHRC when filling out a complaint form because what you put in that form may be critical to the outcome of your case.

A complaint may be received by the MHRC in three ways:

1. You can file it yourself by contacting the MHRC and filling out a complaint form;

2. An employee of the MHRC may file a complaint for you;
or

3. If a complaint has been filed with the United States Equal Employment Opportunity Commission, commonly called the EEOC, the EEOC must permit the MHRC to have the first chance to handle your complaint, and it will refer your complaint to the MHRC for that purpose. After the MHRC has had 60 days to do something about your complaint, the EEOC may act on it.

6. WHAT WILL THE MAINE HUMAN RIGHTS COMMISSION DO ABOUT MY COMPLAINT?

After the MHRC receives a complaint, it conducts an investigation in order to satisfy its staff that the discrimination complained of is a violation of the law. Depending upon the outcome of its investigation, the MHRC may either:

1. Dismiss the complaint and not take any further action on it;
or

2. Try to correct the problem informally by attempting to get the problem settled between you and the person or company against which you complained without taking any legal action.

If the MHRC feels that you will suffer great inconvenience or harm if you do not get help immediately or if the informal attempts at settlement do not produce satisfactory results and the MHRC feels your case is one it should take to court, the MHRC will file a lawsuit for you. Its lawyer would then represent you. Otherwise, the MHRC will inform you of the results of its investigation, and you may hire your own attorney to sue the employer against whom you complained.

*7. HOW CAN I TAKE MY CASE TO
COURT UNDER THE MAINE
LAW?*

You may sue your employer whether or not you have previously filed a complaint with the MHRC. However, unless there is a good reason for not doing so, you must have filed a complaint with the MHRC at least 30 days before you start your lawsuit in order to be able to have your case moved ahead in the court schedule and in order to be able to ask for money to pay your attorney's fees or for certain money damages that might be awarded to you as a punishment of the employer. The court in which you must bring your case is the Maine Superior Court. When in court, you must prove that the discrimination occurred. Once you have done this, the court should try to give you relief that will best deal with your problem. For example, the court could order that:

1. The discrimination be halted;
2. You be hired, rehired, promoted or assigned for or to the position you sought with or without the pay you lost as the result of the discrimination.
3. You be accepted or reinstated into a union; and/or
4. You be paid money for the wrongs you suffered.

You must file your lawsuit in court within two years after you have been discriminated against. Therefore, if you want to file a complaint with the MHRC before filing in court, you should do it well within this two-year period.

*8. DOES FEDERAL LAW PROHIBIT
EMPLOYMENT DISCRIMINATION
BASED ON SEX?*

Yes. Title VII of the United States Civil Rights Act makes it illegal for employers to illegally discriminate on the basis of sex. Title VII prohibits discrimination in recruitment, hiring, promotion, transfer, assignment, pay and other compensation, or terms, conditions or privileges of employment. Also, labor organizations and employment agencies may not discriminate with regard to membership or referrals for employment. Under this federal law sex discrimination may be permitted only if it is a bona fide occupational qualification for a job. For example, a woman may be hired to model women's clothes. This exception has been very narrowly interpreted by the courts, however.

9. HOW DO I FILE A COMPLAINT UNDER TITLE VII?

You may mail a complaint to the Equal Employment Opportunity Commission (EEOC), the federal agency that administers Title VII. It is best to file with both the EEOC and the MHRC. The closest office of the EEOC is located in Boston, Massachusetts.

You must not wait too long before acting after you have been discriminated against. If your complaint has been filed with the MHRC, your complaint must be filed with the EEOC within 300 days after the occurrence of the discrimination or within thirty days of the date on which the MHRC has terminated its action in your case, whichever is sooner. Federal employees should contact their equal employment officers to ascertain any special time limitations which apply to them.

If you contact the EEOC and tell the person contacted that you wish to file a complaint, he will send you a form to fill out. Fill it out, sign it before a notary public, and return it immediately to the EEOC. It is usually best to obtain the assistance of an attorney or a person from the EEOC when filling out the form because what you put in that form may be critical to the outcome of your case.

10. HOW WILL THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION HANDLE MY COMPLAINT?

The EEOC is required by law to let the MHRC have the first opportunity to take action on your complaint. If the MHRC does not act within 60 days of its getting jurisdiction over your case, the EEOC may take action on your behalf. The EEOC may first try to settle your complaint by reaching a satisfactory informal agreement with your employer. If this is unsuccessful, then the EEOC will issue you a notice of failure of conciliation or a notice of a right to sue.

11. HOW DO I TAKE MY CASE TO COURT UNDER TITLE VII?

For 90 days after you have received either a notice of a right to

sue or a notice of a failure of conciliation, depending on the court's interpretation of Title VII, you have a right to start a lawsuit in the United States District Court in Bangor or Portland. If you want to start a lawsuit and have not already contacted a lawyer by this point in the proceedings, you should do so in order that the lawyer have as much time as possible to prepare your case. If you cannot afford to hire a lawyer, you may ask the United States District Court to appoint one to represent you at no expense to you.

You do not always need to wait for the EEOC to decide to issue a notice in order to file your case in the United States District Court. If the EEOC has had jurisdiction over your complaint for 180 days, you may request that the EEOC send you a Notice of Right to Sue and it must do so. Remember that the time you actually have to wait in order to be able to request such a Notice of Right to Sue from the EEOC is 240 days after you first filed your complaint with the EEOC because the MHRC has had jurisdiction over your complaint for 60 days prior to the EEOC getting jurisdiction over it.

*12. HOW DO I DECIDE UNDER
WHAT LAW TO PROCEED AND
WHETHER TO SUE IN STATE
COURT OR IN THE UNITED
STATES DISTRICT COURT?*

This is a complicated problem which should be discussed and decided by you and your attorney. Therefore, it is absolutely necessary that you consult an attorney as soon as possible after the date on which you were discriminated against.

*13. WHAT ARE SOME OF THE
COMMON PROBLEMS THAT I
MAY ENCOUNTER IF I FILE
DISCRIMINATION CHARGES?*

One of the biggest problems is the possibility that your employer will try to retaliate against you for filing a complaint. This type of activity is against the law and should be reported to the governmental agency handling your case or to your attorney.

Another frequent problem is the time limit within which you must file a charge. If you miss any deadline, you may lose your

right to take action against your employer even though you may have a very clear case of discrimination. Therefore, if you wish to file a complaint, you should contact an attorney, the EEOC, or MHRC as soon as possible after the date on which the discrimination occurred.

Another problem is that it may take months or years and a lot of hard work on you and your attorney's part for your case to be decided. Both the state and federal agencies have a backlog of cases. Also, many employment discrimination lawsuits are very risky, time-consuming and expensive especially if the lawsuit is tried in court and not settled before trial. Because of this, some lawyers cannot afford to or will not take such a case without the payment of their legal fees and costs as the case goes along even though you may recover your costs and legal fees if you win your case. Finally, you might not win your case because you do not have enough evidence to prove discrimination even though you know it occurred and because witness are afraid to testify for fear of losing their jobs.

14. *DO I HAVE ANY SPECIAL
LEGAL PROTECTION FROM
EMPLOYMENT DISCRIMINA-
TION BY AN EMPLOYER WHO
RECEIVES FEDERAL MONEY?*

If you work for an employer who has a federal contract or grant, you may seek protection under Presidential Executive Order Numbers 11246 and 11375. Among other things these Orders prohibit employers with federal grants or contracts from discriminating on the basis of sex. The Office of Federal Contract Compliance (OFCC) located at 14th Street and Constitution Avenue, N.E., Washington, D.C. 20210, and the federal agency which has awarded your employer the grant or contract enforce these Orders. It does this by periodically checking up on the contractors' employees file. The OFCC and the appropriate agency has the power to cancel a contract or to bar an employer from receiving future federal funds when that employer has engaged in illegal discrimination. However, the OFCC and most agencies are reluctant to impose such penalties. Therefore, it probably is best to bring an action under Title VII and the Maine Human Rights Act as well as complaining to the OFCC or the appropriate federal agency if you are discriminated against by an employer with a federal grant or contract.

*15. MAY MY EMPLOYER PAY ME
LESS THAN HE PAYS MEN FOR
COMPARABLE JOBS?*

No. There are state and federal laws that require equal pay for comparable jobs. The jobs do not have to be absolutely identical to require equal pay but must be substantially similar. If you think your employer is violating these laws, contact the Director of the Bureau of Labor and Industry, Capital Plaza, Western Avenue, Augusta, Maine 04330, the Maine Human Rights Commission, and/or the Wage and Hour Division of the United States Department of Labor, 76 Pearl Street, Portland, Maine, for complaint forms and further information.

*16. HOW ARE MY RIGHTS
ENFORCED UNDER THE EQUAL
PAY LAWS?*

The procedure and time limits for filing a complaint with the MHRC under the Maine Human Rights Act are the same as those described in the sections on employment discrimination and the Maine Human Rights Act.

If you file a complaint with the Department of Labor, the Department will investigate your complaint and try to end the discrimination by reaching an agreement with your employer. The Department will not reveal your identity to your employer without your knowledge and consent. If settlement is not possible, the Department may file a lawsuit against your employer. You also have the option of filing your own lawsuit against your employer in United States District Court. If you win, you may recover up to two years' back pay, your court costs, and attorney's fees.

*17. WHAT CAN I DO IF AN
EMPLOYER REFUSES TO HIRE
ME BECAUSE HE THINKS I AM
TOO OLD?*

Age discrimination is both a violation of federal law and the Maine Human Rights Act. The Federal Age Discrimination in Employment Act forbids discrimination by employers of twenty or more employees against persons between the ages of forty and

sixty-five years. This law does not apply to situations in which age is a bona fide occupational qualification such as modeling "junior miss" fashions or to bona fide seniority systems and benefit plans.

If you feel that you have been discriminated against on account of your age, contact the Office of the Wage and Hour Division of the United States Department of Labor at 76 Pearl Street in Portland, Maine, and the MHRC. If you do file a complaint with the Department of Labor, your identity will not be revealed to your employer without your consent. You must contact the Department of Labor within 300 days after the discrimination occurs or within 30 days after you receive a notice that the action in your case by the Maine Human Rights Commission has ended, whichever is sooner. Under the federal law you may file a complaint in the United States District Court 61 days after you have started proceedings under state law unless state proceedings are terminated sooner than after 60 days. Then you may file sooner.

It is not clear from federal law whether or not you must file a complaint under the Maine Human Rights Act before suing in court under the federal law. To be safe, file a complaint with the MHRC, the Department of Labor and later in the United States District Court.

The procedure and time limits for filing a complaint for age discrimination with the MHRC are the same as the procedure and time limits for a complaint for employment discrimination which were discussed herein earlier.

Remedies which you may obtain include lost wages, attorney's fees and court or agency enforced changes in your employer's employment practices.

CHAPTER II

CREDIT DISCRIMINATION

-
1. *MAY I BE DENIED CREDIT OR GIVEN DIFFERENT CREDIT TERMS BECAUSE I AM A WOMAN, DIVORCED, SINGLE, SEPARATED OR MARRIED?*
-

The Maine Human Rights Act and the United States Equal Credit Opportunity Act make discrimination in certain credit transactions illegal. If you think that you have been discriminated against by a bank, a store, a loan company, or any other organization or business extending loans or selling on credit because you are a woman or because of your marital status, contact the MHRC or an attorney. They can help you deal with state and federal laws concerning such discrimination.

-
2. *CAN I GET A CHARGE ACCOUNT IN MY OWN NAME, MY MAIDEN NAME OR A HYPHENATED NAME?*
-

Assuming you can meet the necessary financial requirements and that the name you want to place on your charge account is the name you regularly use, you must be permitted to use that name on your charge account.

-
3. *CAN I BE REQUIRED TO HAVE MY HUSBAND'S CO-SIGNATURE ON A LOAN?*
-

Yes, but only if the institution requires wives' signatures on husbands' applications as well.

4. WHAT OTHER TYPES OF CREDIT DISCRIMINATION ON ACCOUNT OF SEX ARE FORBIDDEN?

According to the regulations which have been issued under the Equal Credit Opportunity Act the following acts are forbidden. If you are married and applying individually for credit, the creditor may not ask for *any* information about your husband. The only exceptions to this rule are: (1) if you are including alimony as part of your income; (2) if you are relying on joint credit history, or (3) if you are using jointly-owned property as collateral for a loan. In these cases, the creditor may ask for information about your husband.

It is illegal for a creditor to ask you to reapply for credit or for a creditor to terminate your account on the basis of a change in your marital status. If you are refused credit, and ask to be informed of the reasons for this refusal, you must be told the reasons. A creditor must consider alimony and child support as income if requested to do so by the applicant. However, if your receipt of alimony or child support are used to support your credit application, the creditor can require you to show that the payments are regularly made.

A creditor must report credit information on joint accounts in the names of both husband and wife, upon request. This reporting requirement is mandatory for all joint accounts opened after November 1, 1976.

5. HOW DO I ENFORCE MY RIGHTS UNDER THE EQUAL CREDIT LAWS?

In order to complain under state law, contact the Bureau of Labor and Industry, Capital Plaza, Western Avenue, Augusta, and the Maine Human Rights Commission.

In order to recover under federal law, you may sue the creditor who discriminated against you or you may complain to the federal agency which regulates the creditor. If you win in court, you can be awarded court costs, attorney's fees and punitive damages of up to \$10,000.00. You must bring any such court action within two years of the date on which the discrimination occurred.

6. *WHAT RIGHT DO I HAVE TO
ASSURE THAT CREDIT REPORTS
MADE ABOUT ME ARE
CORRECT?*

The Federal Fair Credit Reporting Act gives you the right to see any files which are kept on you by a credit bureau.

Credit bureaus keep credit history files on most individuals who have obtained some form of credit. This information is sent to lenders seeking information about how good a credit risk you are.

A fee equal to that charged creditors may be charged when you look at your file. However, you can see your file at no cost if you are denied credit because of a poor credit report.

You may challenge the accuracy of the reports kept in your file. If you do challenge the accuracy of a report, the credit bureau must check to see if the report is correct. If it is incorrect, the borrower must correct the report and notify the creditor of the correction. If the report is true, but not a fair picture of circumstances causing the poor credit report to result, you have a right to write out your side of the story and put your version in the file.

CHAPTER III

DISCRIMINATION IN EDUCATIONAL OPPORTUNITIES

1. IS SEX DISCRIMINATION BY SCHOOLS PROHIBITED?

Title IX of the Educational Amendments of 1972 is a federal law which makes illegal many discriminatory practices of federally funded schools and colleges, including vocational schools. This law is enforced by the Office of Civil Rights of the United States Department of Health, Education and Welfare.

2. WHAT ARE SOME EXAMPLES OF DISCRIMINATION BY SCHOOLS OR COLLEGES?

The following are examples of illegal sex discrimination by schools or colleges:

1. A school recruits new students primarily from schools that have members of only one sex or discourages applicants of one sex or the other;
2. A school describes programs in ways that discourage members of one sex from enrolling in them;
3. A school evaluates marital or parental status differently for males than for females;
4. A school offers different financial assistance to males or females;
5. A school has different disciplinary standards for males or females;
6. A school offers more or better housing to males than it offers to females;
7. A school offers different courses of study to males or females;
8. A school offers many more athletic opportunities to members of one sex than it offers to members of the other sex;
9. A school discriminates on the basis of sex against an employee and such discrimination is a violation of Title VII of the United States Civil Rights Act.

3. ARE THERE ANY EXCEPTIONS
TO THE PROTECTIONS OF TITLE
IX?

Yes, there are several important exceptions. A school controlled by a religious institution is exempt from coverage insofar as the provisions of Title IX are inconsistent with the teachings of that religion. A military institution is exempt if its primary purpose is to train personnel for the armed forces. All private undergraduate and single-sex public under-graduate colleges are exempt from the rules and regulations relating to admission. However, if a school provides training for the health professions, it is always subject to the provisions of Title IX.

Send a letter outlining the discrimination in full detail to: Director, Office of Civil Rights, Department of Health, Education and Welfare, 330 Independence Avenue, S.W., Washington, D.C. This Department is supposed to investigate your charge and may hold informal hearings about it. If the Department cannot correct a discriminatory practice informally, the Department may hold formal hearings or refer the case to the Department of Justice so that the Department of Justice can seek court action in the matter. It is relatively unusual for the Department of Health, Education and Welfare to refer cases to the Department of Justice. If the Department of Health, Education and Welfare does not act on your complaint, you and your attorney might go to the United States District Court and get an order requiring the Department of Health, Education and Welfare to act. A few courts have held that you yourself have a right to sue as an individual plaintiff in court under this law. However, this is a very unusual action and still not permitted by many courts. If you have been discriminated against in employment on account of sex by a school, it is better to use Title VII to obtain relief from discrimination.

5. HOW DOES THE DEPARTMENT
OF HEALTH, EDUCATION AND
WELFARE PUNISH SCHOOLS
THAT DISCRIMINATE?

The Department can cut off whatever federal money has been

awarded to the school. It also can refuse to permit future federal funds to go to the school. However, if a school is willing to do without federal money, it is free to ignore Title IX requirements.

6. *ARE THERE ANY OTHER WAYS
TO CHALLENGE A SCHOOLS'
DISCRIMINATION IN PROVIDING
EDUCATIONAL OPPORTUNITIES?*

Yes, you may be able to sue a public school for violating the Equal Protection Clause of the United States Constitution. See a lawyer if you wish to do this because you will need legal help to prepare such a case. The United States Supreme Court has recently held that separate but equal sex-segregated schools are permitted under the Constitution.

CHAPTER IV

DISCRIMINATION IN HOUSING

1. DO I HAVE ANY PROTECTION FROM DISCRIMINATION WHEN BUYING, RENTING OR PAYING FOR A PLACE TO LIVE?

Protection from discrimination in housing exists under both the state and federal laws. The Maine Human Rights Act makes it illegal to discriminate on account of sex in showing, selling, renting, leasing, advertising, pricing, or evicting a person from a house, apartment or other place to live. You also have a right to equal treatment from the person or institution to which you apply for financial assistance for the construction, purchase, repair, or renovation of a dwelling. The Federal Fair Housing Act outlaws discrimination on account of sex by banks, building and loan associations, insurance companies and other business or organizations when making loans to build, buy, improve, repair or maintain a dwelling.

2. HOW DO I ENFORCE MY RIGHTS UNDER THESE LAWS?

If you believe you have been discriminated against, you can file a complaint with the Maine Human Rights Commission. The time limit for filing a complaint under the Maine Human Rights Act is two years. The procedure is the same as that for enforcing a sex discrimination complaint under the Act. If you wish to complain about a violation of a federal law, you should send a letter fully explaining your case to the United States Housing and Urban Development Office within 180 days after the act of discrimination or you will lose your rights under this law.

CHAPTER V

INSURANCE

1. DO INSURANCE COMPANIES EVER PLACE WOMEN IN SPECIAL CATEGORIES WHEN WRITING AND PRICING INSURANCE?

Some insurance companies place women in special categories when they write and price insurance. For example, in the past some companies have not and some still do not make disability insurance available to women, or when it is available, it is only available at a much higher cost for women than for men. Also, women of certain status for example, divorced or separated women, may be considered high risk persons while similarly situated men are not. There also may be waiting periods, deductions or other terms offered to women which are different from those offered to men.

Often the rates which men and women must pay for annuities, life, accident and other insurance differ based upon actuarial studies of the risk to the insurance company of insuring men or women against a specific harm. For example, according to actuarial studies, women live longer and have fewer automobile accidents, therefore their life and automobile insurance rates are often lower than men's. Some courts have held that such rate-setting when occurring in insurance plans offered by employers, is illegal discrimination based on sex. This question has not been finally resolved by the United States Supreme Court.

2. IS IT ILLEGAL DISCRIMINATION BASED ON SEX FOR AN EMPLOYER TO REFUSE TO PROVIDE COVERAGE OR TO PROVIDE ONLY LIMITED COVERAGE FOR PREGNANCY AND CHILDBIRTH?

The United States Supreme Court has held that an employer or a governmental body which provides disability insurance to its employees does not have to provide maternity coverage even

though the employer provides coverage for medical problems which are unique to men.

3. *WHAT CAN I DO IF I FEEL I
HAVE BEEN TREATED UN-
FAIRLY UNDER THE TERMS OF
AN INSURANCE POLICY?*

If the insurance plan is part of a group policy offered by your employer, you may be able to file a complaint and sue just as you would for any other type of employment discrimination on account of sex. Other than that, there are no Maine statutes which directly prohibit the insurance industry from making distinctions on the basis of sex with respect to the writing and pricing of insurance. However, you might be able to sue an insurance company under the Maine Constitution for illegal discrimination on account of sex.

CHAPTER VI

CONSTITUTIONAL RIGHTS

**1. DO I HAVE ANY RIGHT TO NOT
BE ILLEGALLY DISCRIMINATED
AGAINST IN ANY WAY ON
ACCOUNT OF SEX UNDER THE
UNITED STATES CONSTITU-
TION?**

The United States Constitution prohibits federal, state and local government bodies from denying equal protection of the law to any person. Sex discrimination of any kind by a governmental body can be a violation of the United States Constitution. A complaint alleging that your rights under the Constitution have been violated may be filed in state of United States District Court. You do not have to go to a governmental agency before filing such a complaint. See an attorney as quickly as possible if you wish to file such a complaint because the time limits within which you must file vary depending on the type of discrimination involved.

**2. DO I HAVE ANY RIGHT NOT TO
BE ILLEGALLY DISCRIMINATED
AGAINST IN ANY WAY ON
ACCOUNT OF SEX UNDER THE
MAINE CONSTITUTION?**

The Maine Constitution has a provision in it similar to the one in the United States Constitution. This provision applies to everyone, not just governmental bodies. One may be able to file a claim of sex discrimination in state court under this provision. The Maine Constitution is not commonly used for this purpose.

CHAPTER VII

WAGE AND HOUR LAWS

1. WHAT ARE THE MINIMUM WAGE AND HOUR LAWS AND TO WHOM DO THEY APPLY?

Both the state and federal governments have minimum wage and hour laws. The federal minimum hourly wage for most non-agricultural employees is \$2.30. Agricultural workers (except for those working for employers who hire less than 500 person-hours of work a year) are covered under the minimum wage laws. If you are an eligible agricultural employee, the minimum hourly wage rate is \$2.20, and as of January 1, 1978 it will be \$2.30. If you receive tips as part of your job, you must be allowed to keep them. However, your employer can consider them for up to 50% of your wages when computing your salary. Any room and board you receive for working may be considered part of your wages. Certain workers are not covered under federal wage and hour laws. These include executives, administrators, professionals, elementary and secondary school teachers, persons employed occasionally as babysitters, companions to the aged or infirm, employees in some seasonal, recreational or amusement jobs, and elected governmental officials, their advisors and personal staff. Under certain conditions the Wage and Hour Division of the Department of Labor will issue certificates to employers allowing them to pay lower wages to learners, apprentices, handicapped workers and full-time students.

You may work overtime. If you work more than a set number of hours in a week, usually 40 hours, you must be paid at least one and one-half times your regular hourly wage rate. Those exempt from the overtime provisions of the federal law include agricultural workers and live-in private household workers.

To find out if you are covered under federal wage and hour laws or to file a complaint, contact the Wage and Hour Division of the United States Department of Labor at 76 Pearl Street in Portland, Maine. An employer who violates the wage and hour laws may be required to pay back wages and money to compensate for damages. The law also prohibits retaliation by an employer for filing a complaint or being involved in any way in wage and hour proceedings.

There is also a state minimum wage rate. This state wage rate will keep pace with federal minimum hourly wage rate increases up

to \$3.00 per hour. Under state law you must be paid time-and-a-half your hourly rate for time worked over 40 hours per week. The law relating to tips is the same as the federal law. Workers who are under 19 years old and who are full-time students may be paid at 75% of the minimum wage rate of other workers.

There are workers who are not covered by the state wage and hour laws. These workers include agricultural, domestic or commissioned employees, cab drivers, employees of non-profit organizations, camp counselors, fishermen and fisherwomen, homeworkers who have no supervision, members of an employer's family and executives. In order to find out more about the state wage and hour laws or to file a complaint, contact the Bureau of Labor and Industry, Capital Plaza, Western Avenue in Augusta, Maine.

CHAPTER VII

PUBLIC FINANCIAL ASSISTANCE

1. WHAT TYPES OF FINANCIAL ASSISTANCE ARE AVAILABLE?

There are a number of different federal, state and local agencies that will financially assist people who meet their guidelines. If you think you might qualify for any such benefits, you should get in touch with the agency handling the appropriate assistance program. Such assistance programs include:

1. Supplemental Security Income;
2. Aid to Families with Dependent Children;
3. Unemployment Compensation;
4. The Federal Food Stamp Program; and
5. Local Emergency assistance.

Further, a number of private and non-profit organizations provide specialized assistance. Contact the local Maine Department of Human Services office for information as to the proviate assistance available, for information about changes in the types of public assistance available, and to learn if you are eligible for public assistance.

2. WHAT IS SUPPLEMENTAL SECURITY INCOME?

Supplemental Security Income is special assistance which is available to persons who are in need and elderly, blind or permanently totally disabled. Contact your local Social Security office for more information if you feel you might qualify for this assistance program.

3. HOW DO I FIND OUT ABOUT AFDC BENEFITS?

If you have children in your custody who are dependent upon you and your income is below a certain level, you may qualify for AFDC payments and free medical care. Contact your local Maine

Department of Human Services office for more information about this program.

4. HOW DO I FIND OUT ABOUT FOOD STAMPS?

Contact your local Maine Department of Human Services office for information about the food stamp program. If you are eligible for the federal good stamp program, you can purchase food stamps for less than they are worth at the grocery store. Then you may take the purchased food stamps to the grocery store and use them instead of cash to pay for most food items.

5. HOW DO I FIND OUT ABOUT OTHER FORMS OF TOWN OR CITY ASSISTANCE?

Contact the city or town office in the city or town where you live. These assistance programs usually provide only emergency funding, giving money to pay food, rent, overdue utility bills, etc., until other forms of more permanent public assistance are available.

6. HOW DO I GET UNEMPLOYMENT BENEFITS?

If you have worked and been paid wages during a period of time preceding the time you become unemployed, you may be eligible for unemployment compensation. Generally, you are eligible for unemployment benefits if you: (1) have made a claim for them; (2) have registered for work and continued to report for work at the Maine Employment Security Commission office; (3) have earned wages in a specified amount during a specific period of time prior to the time you became unemployed; and (4) you are available for work in your usual work or such work for which you are fitted or qualified by training or experience. Generally, you are disqualified from benefits for a specified period of time if you have voluntarily quit work without good cause or have been fired for misconduct. You may be disqualified indefinitely if you have refused to accept work for which you are reasonably suited.

Contact your nearest Maine Employment Security Commission office for more information about whether or not you qualify for unemployment compensation, to apply for unemployment compensation, and to register for state employment assistance.

**7. IF ANY BENEFITS ARE
REFUSED, CUT OFF, REDUCED,
OR OTHERWISE CHANGED, DO I
HAVE A RIGHT TO A HEARING?**

When benefits from state or federal sources are modified, you have a right to be notified in writing of the changes in the benefits and the reasons for the changes. You also have the right to a hearing. In some cases, this hearing must take place before the changes are made. The procedures vary from town to town or for other forms of assistance. Contact your local welfare rights organization if there is one in your area, a lawyer, or the office which cut off your benefits for information concerning your rights of appeal when your benefits are changed.

CHAPTER IX

SOCIAL SECURITY

1. WHEN AM I ELIGIBLE FOR SOCIAL SECURITY BENEFITS?

In order to be eligible for Social Security, you or the person under whom you are claiming must have worked a specific period of time. To find out if you are eligible, contact your nearest Social Security Administration Office.

2. WHEN AM I ELIGIBLE FOR SOCIAL SECURITY DISABILITY BENEFITS?

If you qualify for Social Security, you may also be eligible for disability benefits. You are considered disabled when you have not been able to work for at least a year. Usually a doctor must certify that you are thus disabled. After you have been eligible for disability benefits for two consecutive years, you are covered under Medicare. If you have unmarried children under eighteen or under twenty-two who are full-time students or who become severely handicapped before the age of twenty-two, they will also be eligible for benefits. If you are married, your husband also may be eligible for benefits.

3. WHEN AM I ELIGIBLE FOR SOCIAL SECURITY RETIREMENT BENEFITS?

You are eligible for retirement benefits if you retire at sixty-five or at anytime thereafter. You may collect retirement benefits as early as age sixty-two, but if you do, your monthly benefits will be reduced. If you are married, your husband may claim benefits on your record if he is sixty-two or older. If your husband is eligible for benefits on his own work record, then you and your husband can collect retirement benefits on either your own or on his work record, but not on both. A wife's dependency benefits are 50% of a husband's benefit amount. You can collect under your husband's work record

and later switch to your own benefits if you wish, but as has been mentioned before, you cannot collect on both.

If you are entitled to retirement payments, either on your own or your husband's employment record, you are automatically covered under Medicare's hospital insurance program when you reach the age of sixty-five. To get Medicare's medical coverage you must pay monthly premiums.

4. *IF I DIE, WHEN ARE MY SURVIVORS ENTITLED TO SOCIAL SECURITY BENEFITS ON MY EARNING RECORD?*

Your surviving husband, if he is aged sixty or older, and your unmarried children who are under eighteen years of age or who are under twenty-two years of age if full-time students, or who become severely disabled before the age of twenty-two, can get monthly survivor checks should you die after having worked the required amount of time to become eligible for Social Security. There is also a lump sum payment of \$225.00 available that can be used to help pay your funeral expenses. If you have parents who are sixty-two or older who are dependent upon you for more than one-half of their support, they are also eligible for benefits.

5. *WHAT WILL HAPPEN TO MY ELIGIBILITY FOR SOCIAL SECURITY BENEFITS IF I TAKE TIME OFF FROM WORK?*

If and when you choose or find it necessary to interrupt your career for family responsibilities or for any other reason, your Social Security benefits may suffer because the amount of benefits you receive is based upon your average earnings over a number of years. Generally, the more money you make, the larger your benefits will be. If you have to include in the average computation the years in which you did not work or in which you worked part-time, the amounts of payments for which you are eligible will be lessened. Also you must be sure that you have worked a sufficient amount of time to be eligible for Social Security.

**6. WHEN AM I ELIGIBLE FOR
SOCIAL SECURITY BENEFITS IF I
HAVE NOT BEEN A WAGE
EARNER?**

If you have not worked a sufficient amount of time to qualify for Social Security, you have no coverage for disability benefits if you become disabled. If you are married and your husband becomes eligible for disability benefits, you are also entitled to benefits if you are sixty-two years of age or older or if you are under sixty-two years old and if you are caring for your husband's children who are under eighteen years old or disabled and who are receiving Social Security benefits under your husband's coverage. Unmarried children of a disabled father are eligible for benefits if they are under eighteen years old or under twenty-two years old if full-time students and if they become severely disabled before reaching the age of twenty-two.

You will have Medicare hospital insurance when you reach the age of sixty-five. You can enroll for Medicare medical coverage but for this you must pay a monthly premium.

You are eligible for retirement benefits as a wife when your husband retires and you are at least the age of sixty-two or if you and your husband have an unmarried child under eighteen, or under the age of twenty-two if he is a full-time student, or who has become severely disabled before the age of twenty-two. If you can wait until you are at least sixty-five to collect benefits for yourself, then you will collect an increased amount. You have Medicare hospitalization insurance at sixty-five and at that time you may purchase Medicare medical coverage for a monthly premium.

If you are under the age of sixty and the widow of a deceased person who was eligible for Social Security, you can get widow's benefits if you are caring for the unmarried children of your late husband who are under the age of eighteen or disabled and who are getting benefits based on the earnings of your deceased husband. Your benefits will stop when these children no longer qualify for benefits. You can get widow's benefits in your own right only when you are age sixty or older. If you are disabled, you may be able to begin to collect benefits at age fifty. Your benefits are generally lower if you start collecting them before the age of sixty-five.

**7. MAY I, AS A DIVORCEE, RECEIVE
ANY PART OF MY EX-HUSBAND'S
BENEFITS?**

You must have been married to your former husband for twenty

years or more before you can receive benefits under his earning record. If you have been so married, you can get retirement or disability payments when your ex-husband starts collecting them if you are aged sixty-two or older. If your ex-husband of twenty or more years dies, you may receive survivor's benefits if you are age sixty or older, or age fifty or older if you are disabled, or if you are caring for children of your husband who are entitled to benefits. Your receiving benefits through your ex-husband's eligibility does not diminish the benefits he or his new wife, if any, receives.

8. WHEN SHOULD I CONTACT A SOCIAL SECURITY OFFICE?

Get in touch with a Social Security office to inquire about your benefits if:

1. You are unable to work because of an illness or injury that is expected to last for a year or longer;
2. You are sixty-two or older and plan to retire;
3. You are within two or three months of age sixty-five even if you do not plan to retire;
4. A wage earner in your family dies or becomes disabled.

CHAPTER X

CRIMINAL LAW

1. WHAT SHOULD I DO IF I AM ARRESTED?

It is possible for you to lose or waive many of your legal rights after being arrested before you realize that you have them. In order to protect your rights to the fullest, the first thing you should do—before talking to anyone, pleading guilty, or signing anything—is to insist upon calling and seeing a lawyer. If you cannot afford a lawyer, the state is required to furnish you with one. However, prior to your first appearance in court, the state is not required to furnish you with a lawyer. Therefore, if you cannot afford to have a lawyer advise you before you go to court for the first time, you should remember that anything you say to anyone about a crime in which you may have been involved may be used against you in court.

After you have been arrested you should insist upon appearing before a bail commissioner or a judge and being bailed out of jail as quickly as possible. Use your telephone calls to call someone reliable who can assist you in raising money for bail and in getting in touch with a lawyer.

2. WHAT SHOULD I DO IF I HAVE BEEN SEXUALLY ATTACKED?

You should report the attack to the police. If you want to report it, you can call the police in the town where it happened or the State Police. Do not change your clothes, bathe or douche because you must help preserve evidence of a rape or a sexual attack occurring.

Go to your doctor or to the emergency room of the nearest hospital. You will be examined for injuries, and you should receive information about pregnancy prevention and medical treatment which protects against venereal disease. It is a good idea to take a friend to the hospital with you for emotional support. You should tell your doctor or the hospital personnel how you feel about reporting the rape or sexual attack.

3. WHERE CAN I GET ADDITIONAL HELP?

In some areas of the state there are agencies or counsellors skilled in helping a victim deal with the mental and physical suffering of a sexual attack. If you wish such a counsellor and do not know how to contact one, ask for this information from your doctor, the hospital personnel who treat you, the police, the nearest mental health or other social service agency, or local women's organizations.

4. WHAT KINDS OF SEXUAL ATTACKS ARE CRIMINAL?

Rape and other sexual acts or contacts done against the victim's will are unlawful. "Sexual act" means:

"Any act of sexual gratification between two persons involving direct physical contact between the sex organs of one and the mouth or anus of the other or direct physical contact between the sex organs of one and the sex organs of the other, or direct physical contact between the sex organs of one and an instrument or device manipulated by the other. A sexual act may be proved without allegation or proof of penetration."

"Sexual contact" means:

"any touching of the genitals, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire."

Generally, if the victim is unable to give her consent, sexual attacks upon that person are criminal. However, if a victim voluntarily and knowingly consumed a lot of alcohol or drugs and thus became unable to consent as a result of being unconscious, a sexual attack on this person probably would not be a crime.

5. ARE THERE EXCEPTIONS TO THE SEXUAL ATTACK LAWS?

There are few exceptions. A husband may not be prosecuted for sexually attacking his wife no matter how much force or intimidation is employed, unless the husband and wife are, in fact, but not necessarily legally, separated. Also, a lesser sentence is imposed for sex crimes committed upon a victim who was a voluntary social companion of the attacker at the time of the attack.

6. *WHAT WILL HAPPEN IF I REPORT
A SEXUAL ATTACK TO THE
POLICE?*

You will be questioned by the police and asked about the attack in minute detail. This is not a pleasant experience. It may help to remember that some police officers are just as uncomfortable about asking such questions as you are about answering them. Do not hesitate to object or ask the reasons for any questions you think are unnecessary or improper. Often, it helps to bring a friend along for support. You may find that some people involved with your case seem to disbelieve that you have been attacked.

If you participate as a complaining witness at a criminal trial of the attacker, you should be well-prepared to face a defense lawyer who may attempt to build suspicion about your version of the attack by means that are sometimes demeaning and humiliating. For example, the lawyer may try to prove that you consented to the sexual act or were sexually promiscuous in the past. It is up to the district attorney to protect you from legally objectionable cross-examination by the defense attorney by objecting the asking of impermissible questions. You are not permitted to be represented by your own attorney at the trial, but you must rely on the district attorney to protect your rights.

7. *DO I NEED WITNESSES TO
VERIFY MY COMPLAINT THAT I
HAVE BEEN SEXUALLY
ATTACKED?*

No. Although such witnesses are highly desirable, you are not required to produce any witnesses to support your testimony about the attack. There are seldom witnesses to a sexual attack because of the private nature of the crime. It is for this reason that the outcome of criminal trials of a person who has sexually attacked another person often depends on whether a jury believes the defendant or the person who was attacked.

8. *IS ADULTERY A CRIME IN
MAINE?*

Recently there have been changes in the Maine criminal law. One

such change removed the law which made adultery a criminal offense. Adultery is still a ground for divorce, however.

9. IS PROSTITUTION ILLEGAL IN MAINE?

Prostitution by either men or women is illegal in Maine. Various acts involving prostitutes and prostitution are punishable by fines or imprisonment or both.

CHAPTER XI

MARRIAGE AND YOUR RIGHTS AS A MARRIED PERSON

1. MAY I MARRY WHEN I WANT TO?

If you are over eighteen years old, you may marry when and whomever you wish. If you are under eighteen, you must get your parent's consent to marry. If you are under sixteen years old, not only must a parent give permission for you to marry, but a probate court judge must be told of your marriage intentions. When you cannot get the necessary consent from a parent or from a probate judge, you will not be able to legally marry in the State of Maine because you will not be issued a marriage certificate. In Maine, a marriage is not considered legal unless a marriage certificate has been issued for it.

2. WHAT ARE MY PROPERTY RIGHTS AFTER I MARRY?

After you are married, most property over which you or your husband acquire ownership becomes marital property subject to division if the marriage is ended. This is true no matter who actually has title to the property or how title is held. All property held by spouses is presumed to be marital property. This presumption is overcome by showing that the property involved falls within the categories described in the following paragraph.

Property which you owned in your own right prior to your marriage does not become marital property. Further, property which either spouse (1) acquires by gift or through inheritance; (2) acquires in exchange for property acquired prior to marriage; (3) acquires in exchange for property acquired by gift or inheritance; (4) acquires after a decree of legal separation; or (5) excludes from marital property status by prior agreement is not marital property. In addition, marital property does not include increases in the value of property acquired prior to marriage.

*3. HOW ARE MY RIGHTS TO
CONTROL MY OWN PROPERTY
AFFECTED BY MY MARRIAGE?*

Marriage has no effect upon your right to buy, sell or otherwise control your separate property. Your husband can get no rights over your separate property unless you give him such rights. If you do give your husband the right to manage your property, you may, in writing take that right away. Both you and your husband have joint rights of management and control over marital property.

If you receive property from your husband, you may not dispose of it without his consent, unless he gave it to you in payment of a debt he actually owed to you. If you have been given property for which your husband has paid or if the gift of property was not in payment of a debt, that property may be taken by a court and sold in order to pay debts that your husband owed before he gave you the property. These rules apply equally to any such property which you have given your husband. If a married person sells or transfers real estate, the spouse must sign away the special rights and interest in that property given to the spouse by the Maine laws of descent.

*4. MAY I MANAGE AND CONTROL
MY OWN WAGES?*

You have an absolute right to keep your wages and make your own decisions about what to do with them. However, under Maine law, you are not permitted to be paid for working in a family business.

*5. ARE MY HUSBAND AND I LIABLE
FOR EACH OTHER'S DEBTS?*

You are not liable for your husband's debts which were incurred before your marriage to him and likewise, your husband is not liable for those debts of yours. Generally, neither of you are liable for each other's debts which are incurred after marriage. You are liable for any debts of your husband's for which you co-signed, just as he is for those debts of yours for which he co-signed. Your husband is generally liable for debts incurred by you in order to supply yourself and your children with the necessities of life, but you are not liable for debts incurred by your husband for his necessities.

6. ARE WE BOTH LIABLE IF ONE OF US IS SUED?

If you took no part in the act, you will not be liable. If one of you owes someone else money, any property that you and your husband own together and certain other real estate may be taken by a court to pay off the debt. (See discussion under Question 3 above.)

7. MAY I SUE OR BE SUED BY MY HUSBAND?

You may sue or be sued by your husband. However, if the suit is over property, the property must be worth more than \$100.00.

8. MAY MY HUSBAND AND I MAKE A CONTRACT ABOUT THE RIGHTS WE WILL HAVE IN EACH OTHER'S PROPERTY DURING THE MARRIAGE OR AFTER DIVORCE OR DEATH?

You may make such an agreement. It must be signed in the presence of two witnesses before you are married. Of course, you may always provide for disposal of your property in a will or trust agreement.

9. WHAT SHOULD I DO IF MY HUSBAND BEATS ME?

Marriage does not give a man the right to beat or otherwise physically abuse his wife. If you are threatened or attacked by your husband, you may report it to the police or district attorney's office, since such abuse is a crime. A wife-beating complaint is frequently looked upon with skepticism by law enforcement personnel. Often law enforcement personnel do not want to become involved in what they consider a family problem. You may also cite such abuse as grounds for divorce. You should also contact the local office of the Maine Department of Human Services to see if there is any special help available to you in your geographical area.

CHAPTER XII

ANNULMENT, LEGAL SEPARATION AND DIVORCE

1. HOW CAN A MARRIAGE BE ANNULLED?

Certain marriages can be annulled. Annulment is a process whereby the court invalidates a marriage that is illegal. A marriage may be annulled for the following reasons:

1. If you married a relative of yours to whom the law prohibits marriage;
2. If either you or your husband were "mentally ill or feeble-minded" at the time of the marriage;
3. If either you or your husband had a living spouse to whom you or your husband were still married at the time of your second marriage; or
4. If either of you are sentenced to life imprisonment.

In order to annul a marriage you should file a complaint with the court asking for an annulment. The court will then decide whether or not to annul the marriage. It is generally wise to consult a lawyer for assistance when seeking an annulment of a marriage.

2. WHAT IS A LEGAL SEPARATION?

If you have lived apart from your husband for one year or if your husband has been gone from your home for one year, you may file a complaint in the probate court asking that you be declared legally separated. You may then ask to be awarded custody of any children born of the marriage, for support payments, and for any attorneys' fees spent in the case. You may also ask the court for an order protecting you from any restraint on your personal liberty by your spouse. It is generally wise to consult a lawyer for assistance when seeking a legal separation.

3. WHAT ARE THE GROUNDS FOR OBTAINING A DIVORCE IN MAINE?

There are eight grounds which you may assert when filing for a

divorce. They are: (1) cruel and abusive treatment; (2) adultery; (3) impotence; (4) extreme cruelty; (5) desertion for three consecutive years prior to filing for divorce; (6) gross and confirmed habits of intoxication, including alcoholism as well as some forms of drug abuse; (7) non-support; and (8) irreconcilable differences.

4. HOW CAN I GET A DIVORCE?

First you must file a complaint with the district or superior court. Divorce complaint forms are available at the clerk of court's offices. After the complaint is filed and a copy of the complaint and a summons is given by a sheriff to your spouse or notices of your suit are published in a newspaper when you cannot locate your spouse, there is a sixty-day waiting period. A court hearing on the divorce is held sometime after the 60 days have passed.

Even though it isn't required by the divorce laws, a court will usually require that you bring to the hearing two witnesses who have first-hand knowledge of your marital problems to describe your marital problems to the court. Sometimes it is difficult to find two witnesses with such first-hand knowledge. In this situation, you should try to find one witness with first-hand knowledge of some of your marital problems and another witness who can state to the court that you are a truthful person or two witnesses to testify as to your truthfulness.

If the grounds for divorce are irreconcilable differences, then both you and your husband must see a marriage counsellor. The counsellor will be a witness at your divorce hearing and will present a report at the hearing that states that the differences between you and your husband are unable to be resolved and the marriage should be ended. Usually, you must have one additional witness at the hearing besides yourself and the counsellor. This witness should have first-hand knowledge of your marital problems and your attempts at resolving them or at least should be able to testify that she knows you to be a truthful person.

Commencing in October, 1977, when the merits of a divorce action are not contested no corroborating witnesses are required. Further, if the grounds of the divorce are irreconcilable differences and both parties agree that the differences are irreconcilable, neither party is required to see a marriage counsellor in order to obtain a divorce. However, if one party denies that the differences are irreconcilable, then the Court may order one or both parties to seek marriage counselling as a condition to granting the divorce. If the person who denies that the differences are irreconcilable refuses without good reason to see a marriage counsellor when ordered to do

so by the Court, that refusal is evidence that the marital differences are irreconcilable.

5. DO I NEED A LAWYER TO GET A DIVORCE?

You may represent yourself in a divorce proceeding. However, you should hire your own lawyer if you and your spouse have disagreements about alimony, child support, child custody, visitation rights or any other part of a divorce settlement. This is especially true if the property involved in a divorce is considerable, if your husband has hired a lawyer, or if you feel you cannot trust your husband to be fair to you or the children. There is a publication titled *Do Your Own Divorce in Maine*, by Divorce Reform, Inc., that is available in many bookstores. This book should be helpful to anyone seeking a divorce, with or without a lawyer's help.

6. WHO PAYS FOR MY LAWYER'S FEES?

If you cannot afford to pay the legal fees incurred by you when getting the divorce, or seeking alimony, custody, property division, and/or child support, your husband may be ordered to pay them.

7. HOW CAN I OBTAIN ALIMONY?

Alimony is intended to provide support for the divorced woman. It is not the same thing as child support which is used to provide support to the children of a marriage. It is also not the same thing as the money a wife may receive when marital property is divided. Alimony is considered income to the wife and as expense to the husband for income tax purposes. You should state whether you want alimony in the divorce complaint. If you do not want alimony at the time of your divorce, you may wish to request alimony in the amount of one dollar per year. An order granting alimony in the amount of one dollar per year may preserve your right to alimony at a later time.

At the time of the hearing on your divorce, you will need to provide the court with a statement of your income and expenses as well as those of your husband to support your argument for the

amount of alimony you want. When granting or setting the amount of alimony, the court will ordinarily consider your ability to support yourself at the time of the divorce and in the future as well as your contribution to the marriage and your financial situation.

You may enter into a property settlement agreement with your husband agreeing to an amount of alimony or to not ask for alimony.

8. HOW CAN I OBTAIN CHILD SUPPORT?

If you are given custody of the children of a marriage, your husband will usually be ordered by the court to pay a certain amount of money on a regular basis for the support of the children. Likewise, if your husband receives custody, you will probably be required to pay child support if you have sufficient income to do so.

You should state in your complaint for divorce that you are asking for a reasonable amount of money for support of the children. When you have the divorce hearing, you should be prepared to prove that you need and that your husband is able to pay a specific amount of money for child support. In order to do this, you should provide the court with detailed statements of you and your husband's income and expenses, including the cost of supporting the children. The amount of child support may be agreed upon by you and your husband ahead of time. The court usually, but not always, awards the amount of child support agreed upon. The money that you receive for child support is not taxable under the state or federal income tax laws.

You or your ex-husband may ask the court to change the amount of court-ordered child support if circumstances cause the amount of support awarded to be unjust. This request for more or less money must be backed up with proof that your or your ex-husband's financial situation has changed enough to justify a change in payments.

In the absence of a court order for support, the State Department of Human Services may set an amount of support and order that payments of that amount be made by your husband. The Department has the power to do this when you are receiving public assistance (AFDC) payments for the benefit of your children. Contact the Legal Division of the Department of Human Services, 221 State Street, Augusta, Maine 04333, for more information on this subject. Likewise, if your ex-husband has custody of the children and is receiving AFDC payments, the Department may order you to pay support.

**9. WHO RECEIVES CUSTODY OF
THE CHILDREN WHEN A
DIVORCE OCCURS?**

You and your husband may agree as to custody arrangements prior to the divorce hearing. If you are unable to agree then you can request that the court grant you custody of the children, if that is what you wish, and the court will decide who will receive custody. Sometimes the court orders an investigation by the Department of Human Services of the child-rearing capabilities of each parent prior to deciding the issue of custody. You must remember that custody can be changed by the court at anytime there is a reason to do so even if the court has in the past ordered custody to be given to one parent or the other. The person not receiving custody will usually have the right to reasonable visitation with his children.

**10. IS IT POSSIBLE TO LIMIT ONE
PARENT'S RIGHT TO VISIT THE
CHILDREN?**

If it is necessary to limit visitation rights for the protection of the children, the court will do so. The court rarely totally prohibits visitation by a parent, but it will often permit visitation only at specific times and places and under certain conditions when that is necessary for the mental or physical health or safety of the children. Visitation rights previously ordered by the court can be changed by the court for good cause.

**11. HOW IS PROPERTY DIVIDED
WHEN A DIVORCE IS GRANTED?**

You and your husband may agree upon a division of the marital property. You and your husband may each keep your own non-marital property. Absent a property settlement agreement between you and your husband, the court will divide the marital property between you after considering among other things, the contribution each made to acquiring the property, including the contribution as a homemaker, the value of the other property awarded to each spouse, the financial situation of each spouse at the time of the division of the property, and the needs of each spouse. For example, the spouse with custody of the children will often be permitted to remain in the family home.

12. WHAT HAPPENS IF THE PERSON
WHO IS ORDERED BY THE
COURT TO PAY CHILD SUPPORT
FAILS TO PAY?

If your husband fails to pay child support or pays less than the court-ordered amount of child support, you can go back into court and have the court enforce its order. Likewise if you fail to pay court-ordered support when your husband has custody of the children, he can go back into court and enforce the court's order against you.

Usually, the court enforces its order by giving a stern instruction as to the consequences of failure to pay and by ordering that the debtor's property be sold and the proceeds be used to pay the owed support. In extreme cases of wilful failure to pay, the court may put the person not paying support in jail for contempt of court. Also it is a crime to wilfully fail to support one's children, and the district attorney may criminally prosecute a person for failure to pay child support. If the person is not paying support because he is out of work or for some other good reason, the court may reduce the amount of support to be paid in the future and sometimes orders less than the total amount of back support owed to be paid.

It is often difficult and expensive to enforce your children's right to support. You may use the services of the Department of Human Services to enforce a court's support order. In order to do this, however, you must pay to the Department an initial fee of \$20.00 and a continuing fee of ten percent of the monthly payments the Department collects for you up to a maximum of ten dollars per month.

13. MAY I REFUSE TO LET MY
HUSBAND VISIT OUR
CHILDREN IF HE IS NOT
PAYING THE COURT-ORDERED
SUPPORT?

Generally, in Maine the courts regard support and visitation as two separate issues. They frequently enforce a person's visitation rights even if that person is not paying support. They may be less likely to do this if failure to pay support is deliberate. Also, if your children have a good relationship with their father, it is not a good idea to restrict their seeing him.

*14. IF I AM RECEIVING AFDC
PAYMENTS FOR MY CHILDREN,
MAY I KEEP ANY CHILD SUP-
PORT MY HUSBAND MAY PAY
TO ME DIRECTLY?*

Under the law if you are receiving AFDC payments, your rights to receive child support are automatically assigned to the Department of Human Services. In addition, you will be required to execute a written assignment of your right to past, present and future support to the Department. As a result of the assignment, your children's father will make his support payments directly to the Department of Human Services. Each month, the Department will then pay you the amount your ex-husband has paid in monthly child support plus the amount of public assistance money that is needed to bring your total monthly income to a level "adequate for your particular needs." Generally, the need level set by the Department permits only necessities to be purchased.

*15. HOW DOES THE DEPARTMENT
OF HUMAN SERVICES ENFORCE
ITS SUPPORT ORDERS?*

The Department of Human Services may take parents who fail to pay support to court. The parent who fails to pay may be put on probation or in jail. Certain property and income can be taken and used for support. Contact the Legal Division, Department of Human Services, 221 State Street, Augusta, Maine, for more information about the program.

CHAPTER XIII

PARENTS AND CHILDREN

1. *WHAT ARE THE RIGHTS OF PARENTS IN RELATION TO THEIR CHILDREN?*

Parents are jointly entitled to the care, custody, control, services and earnings of their children. Neither parent has a right to greater control over the affairs of their children.

2. *MAY ONE PARENT OBTAIN SOLE CUSTODY OF CHILDREN?*

If the parents of children are living separately, one or the other parent may file a petition with the probate or superior court seeking custody of the children. The judge will then decide which parent shall have custody. The court also may order a father to pay support if children are in the custody of their mother and vice versa.

3. *MAY A PARENT SUE FOR INJURIES OR WRONGS DONE TO THEIR CHILDREN?*

Both parents may sue for injuries or wrongs to their children. If one parent refuses to sue, the other parent may sue alone.

4. *IS THERE A LAW TO PREVENT CHILDREN FROM BEING ABUSED BY THEIR PARENTS?*

Abuse, neglect, overwork, and extreme punishment of a child by a parent or guardian is punishable by a fine of not more than one hundred dollars or a jail term of not more than eleven months. A parent or guardian may also be liable under various other criminal laws for abusing and mistreating children. For example, a parent could

be guilty of sexual abuse, rape or murder of a child. The State Department of Human Services and the police should be contacted in cases of child abuse. Often the Department will remove an abused child from the custody of its parents.

5. *MAY A FATHER WHO IS NOT MARRIED TO THE MOTHER OF HIS CHILD BE HELD RESPONSIBLE FOR THE CHILD'S SUPPORT AND FOR THE EXPENSES OF PREGNANCY AND CHILD-BIRTH?*

A father who is not married to the mother of his child is responsible for the reasonable expenses of the mother's pregnancy and recovery after birth and for the necessary support and education of the child, as well as for reasonable lawyer's fees for the prosecution of a paternity suit, if one is necessary.

The mother may bring a paternity action against the father for the support and expenses. The Legal Division of the Department of Human Services located at 211 State Street in Augusta is currently interested in prosecuting such paternity cases and in enforcing support rights for welfare recipients. Contact that office for assistance.

6. *HOW ARE BLOOD TESTS USED TO DETERMINE PATERNITY?*

A court may order a mother, child and alleged father to have blood tests in order to aid in determining who is the father of the child. If an alleged father refuses to submit to blood tests, the court may decide the issue of fatherhood against that person. If the experts studying the blood tests agree that the alleged father cannot be the father because of differences in blood types, then the court will accept that opinion. If the experts disagree, the judge or jury will hear all evidence and then decide who is the father. If the experts agree that the tests show that the accused could be the real father, the judge will decide whether or not to use the evidence of the blood test at the trial. His decision will be based upon how rare a particular blood type is.

CHAPTER XIV

NAME CHANGE

1. HOW MAY I HAVE MY NAME CHANGED?

If you do not wish to use the legal name you have, you may change your name in probate court. Go to the probate court and ask for a change of name petition. On the petition you will have to indicate such things as your present name, the name you want to acquire, and the reason why you wish to change your name.

You will have to pay a five-dollar filing fee when you file the petition. You will also be called upon to pay a fee (averaging five to six dollars) to have public notices of your intent to change your name placed in the legal notice column of a local newspaper.

Sometime after the notices have been published, you will be required to bring your petition before the probate judge. The probate judge has the power to grant or refuse you the right to change your name. The usual procedure is for the judge to read the petition and ask you questions about why you wish to change your name. In deciding whether or not to permit a change of name, the court will ascertain whether:

1. The name change is being done to defraud anyone;
2. There is any important inference with the rights of others;
3. The welfare of your children, if you have any, will suffer; and
4. The name chosen is "scandalous or frivolous."

If your petition is granted, you must pay an additional fee of three dollars to obtain the certificate indicating your name change.

After you have changed your name, you should notify the town or city clerk in order to remain properly registered to vote. If you have a drivers license, you must notify the Secretary of State so that the name on your license may be changed. You should also notify your Social Security office and various stores at which you may have charge accounts.

2. MAY I KEEP OR ASSUME THE NAME OF MY CHOICE IF I MARRY?

The traditional practice is that a wife automatically takes her

husband's last name when they marry. The courts of Maine have not yet ruled whether this is only a tradition or a legal requirement. Many women in Maine are keeping their maiden names when they marry. If you want to do this, you should not assume your husband's name after the marriage ceremony and notify the appropriate authorities of your intention so that such records as your registration to vote will not be inadvertently changed.

If you have assumed your husband's name and want to re-assume your maiden name, you must petition probate court for return of your maiden name.

CHAPTER XV

WILLS AND PROBATE

1. IF MY HUSBAND DIES, WHAT SHOULD I DO ABOUT HIS ESTATE?

The first thing you should do is consult a lawyer for a full explanation of your rights and responsibilities. Under certain circumstances, you and your children have very important rights to special allowances and support prior to the distribution of the estate. Also, you usually must pay your husband's just debts out of his estate, file certain papers in court and file tax returns in order to have his property turned over to you and other heirs.

2. WHAT IF MY DECEASED HUSBAND AND I OWNED OUR HOME TOGETHER?

If you and your deceased husband held title as "joint tenants" the title to the house will automatically pass to you without going through the probate court. This does not mean that you do not have to pay death taxes on the property. Its best to consult an attorney when you are dealing with these inheritance and estate problems.

3. WHAT RIGHTS DO I HAVE IF MY HUSBAND DIES AND LEAVES A WILL?

You may, if you wish, elect to take the share of the estate that you would have been entitled to had he died without a will. You must file a notice with the probate court within six months after the will is probated indicating that you want this done. You may not take what is left you in the will and what would be yours without it unless the will shows your husband clearly intended to allow you to do both. Naturally, your deceased husband's just debts must be paid out of the estate before you can be paid part of his estate. Also, you may have to pay taxes on your inheritance. You should consult a lawyer for further information about this matter.

4. *WHAT DO I INHERIT IF MY
HUSBAND DIES WITHOUT
LEAVING A WILL?*

Maine law states very specifically how much of the estate you inherit and how much your husband's children or other relatives may inherit. It is best to consult with a lawyer to learn of your rights in this situation because it is possible that you do not have a right to inherit the entire estate.

5. *ARE THERE ANY RESTRICTIONS
THAT BEING MARRIED WOULD
PLACE ON MY RIGHT TO MAKE A
WILL?*

Marriage does not affect your right to dispose of property by will. It's best to consult a lawyer for assistance if you want to write a will.

CHAPTER XVI

HEALTH

1. ARE FAMILY PLANNING SERVICES AVAILABLE IN MAINE?

There are agencies throughout the state that offer a range of family planning services including counselling, pregnancy testing, contraceptives, and venereal disease information. These agencies also will assist you in dealing with an unwanted pregnancy. Services are often provided by these agencies on a sliding fee scale, or if you qualify, free of charge.

Look in your yellow pages under "Social Service Agencies" or ask a doctor or personnel at the local hospital for the nearest family planning agency.

2. AS A MINOR AM I REQUIRED TO INFORM MY PARENTS OR GET THEIR CONSENT IN ORDER TO GET TREATMENT FOR VENEREAL DISEASE?

A minor is generally entitled to a confidential relationship with a doctor. Therefore, the parents do not have to be so informed.

3. AS A MINOR AM I REQUIRED TO GET MY PARENTS' CONSENT IN ORDER TO OBTAIN CONTRA- CEPTIVES?

You are not required to inform your parents or to get their permission in order to obtain contraceptives, if you are married and a parent or if a doctor determines that it would be a hazard to your health to be without contraceptives. Most doctors will prescribe contraceptives under this last standard if there is a danger of you becoming pregnant without them. The one exception to this is the insertion of an intrauterine device (IUD). Since this is considered a form of minor surgery, most doctors will require your parents to consent to the insertion of an IUD if you are a minor.

4. WHAT SERVICES ARE AVAILABLE TO ME IF I HAVE AN UNWANTED PREGNANCY?

There are a number of social service agencies which deal with the problems of an unwanted pregnancy. A doctor, clinic or a family planning agency can refer you to one. If you wish to have the baby, there are organizations which will assist you in doing this. They will help you no matter whether you elect to keep the child or place it with adoptive parents.

You may decide to have an abortion. If you do, a doctor or family planning clinic can help you arrange to have one. Inasmuch as doctors, other medical personnel, and hospitals are not required by law to do abortions or permit abortions on their premises, you may not be able to have the abortion done by the same doctor who determined that you were pregnant. After the first twelve weeks of pregnancy, it is extremely difficult to obtain an abortion in Maine unless the reason for the abortion is to avoid great risk to your life. Therefore, you would have to go to another state to have an abortion performed after the twelfth week of pregnancy.

Until recently, most doctors required parental consent before they would perform an abortion. The United States Supreme Court has recently ruled that in most situations minors do not need their parents' consent to have an abortion. Under the present state of the law, the father of an unwed mother's child does not have to consent to the abortion being done in order to have the procedure carried out.

CHAPTER XVII

HIRING A LAWYER

1. *HOW DO I FIND A SUITABLE LAWYER?*

You should select a lawyer with the same care which you would use when selecting a doctor. Just as in the case of choosing a doctor, there are a number of paths that will lead you to a lawyer who will be suited to your needs.

You can call the Maine State Bar Association's Lawyer Referral Service, explain the nature of your problem, and ask to be referred to an attorney. Under this referral system, you are referred to an attorney for a half-hour consultation for a set minimum fee to be paid to that attorney. Thereafter, you and the attorney may make your own fee arrangements.

If you do not wish to use the referral service, you could talk to your acquaintances and business or other associates about which lawyers they have used and which lawyers they recommend. For example, if you have financial problems, you could talk to an officer in your bank or if you have divorce problems, you could ask persons who do marital counselling for the names of lawyers whom they recommend. Local consumers' groups, unions, women's organizations, churches, and other organizations might be of help too. Asking a friend who has had a legal problem similar to yours is often helpful.

Once you have a list of prospective lawyers, then you should arrange to have an initial consultation with the one you feel would be most suited for your needs. This conference should be for the purpose of determining whether you wish to retain the lawyer. Often such initial consultations are without fee, but you should be sure to ask if a fee will be charged for this initial consultation before you make an appointment to see the lawyer. You usually cannot expect to get specific legal advice during the initial consultation. This consultation is also used for the purpose of ascertaining whether or not a lawyer can help you with your problem, whether that attorney will take your case, and under what terms he/she would take the case. During this first conference don't hesitate to ask any questions which you feel are necessary to gain the information you need in order to decide whether or not to retain that attorney. You should be able to determine whether or not you wish to retain a particular attorney by asking such questions as:

1. Do you often handle cases like mine?

2. What special background or expertise do you have which relates to my problem?

3. What are your fees and what would be the approximate amount of the fee and the fee arrangements in my case? When must the fees be paid and will there be any other costs in my case? If so, approximately how much money will be spent and for what purposes?

4. What are your office hours and how much may I contact you outside of office hours?

5. Who in your firm will be working on my case?

6. Approximately how long will it take to resolve my problems?

7. What generally are the steps you will take to help me?

2. WHAT QUALITIES SHOULD I LOOK FOR WHEN SELECTING AN ATTORNEY?

You should feel confidence and trust in your attorney just as you would in your family doctor. You should be able to communicate easily with your attorney, and your attorney should be ready, willing and able to discuss your case thoroughly with you. You should feel secure that the attorney has the requisite experience, expertise and time to handle your case. All these considerations should be weighed along with the amount of fees a particular attorney charges when you select an attorney to represent you.

You should be furnished an itemized bill for all services rendered as well as copies of all important papers written by your attorney for your case.

3. WHAT SHOULD I DO IF I BECOME DISSATISFIED WITH THE LAWYER I HAVE CHOSEN?

Most lawyers who practice in Maine are dedicated, hardworking people who seek the best result they can get for their clients. However, as in any profession, there are a few lawyers who may not adhere to this high standard. You do not have to be satisfied with less than the best because the best is available. If you are dissatisfied with the quality of service you are receiving, it is usually wise to first discuss the problem directly with your attorney. Often problems are caused by incomplete communication between an attorney and a client. If you feel that these problems cannot be worked out, you

may dismiss your attorney and hire another one. Be careful not to dismiss your first attorney until another attorney has agreed to handle your case. Otherwise your case may suffer while you are between lawyers.

If you dismiss a lawyer, the lawyer must return to you any advance fees you have paid him which he has not earned and all the material in his files which you need to pursue your claim.

If you feel you have a grievance against an attorney about the way he handled your case or the fee you were charged, you may contact the Maine State Bar Association about the matter. The Association provides committees which handle fee and other grievances against attorneys. You may also need to consult another attorney for advice in the matter or for assistance in taking court action.

4. *WHAT SHOULD I DO IF I CANNOT AFFORD TO HIRE A LAWYER TO REPRESENT ME?*

Pine Tree Legal Assistance has offices throughout Maine and gives free legal assistance in non-criminal matters to indigent persons. The Cumberland Legal Aid Clinic gives free legal assistance in civil and criminal matters to persons living in York and Cumberland Counties. This clinic is located at the University of Maine Law School in Portland, Maine, and is staffed by law students and law professors. Finally, some county bar associations have organized referral systems for indigent persons. Consult the bar association in your county if you wish to learn whether or not a particular county bar association has organized such a service.